

## **REMARKS**

Applicants have received and reviewed the Office Action dated April 18, 2002. By way of response, Applicants have canceled claims 17, 18, 25-27, and 57 without prejudice, amended claims 1, 19, and 56, and added claim 58. Claims 1-8, 11-16, 19-24, 56, and 58 are pending. No new matter is introduced. Applicants submit that the amended and newly presented claims are supported by the specification.

For the reasons given below, Applicants respectfully submit the amended and newly presented claims are in condition for allowance, and notification to that effect is earnestly solicited.

### **Petition for Extension of Time**

It is noted that a three-month petition for extension of time is necessary to provide for timeliness of the response. A request for such an extension is made extending the time for response from July 18, 2002 to October 18, 2002.

### **Examiner Interview**

Applicants thank the Examiner for courtesies extended during the Examiner interview of July 18, 2002. Applicants appreciate the opportunity to discuss various aspects of this patent application. As stated in the Interview Summary, the Examiner indicated that claims including the recitation of the host cell being in stationary growth phase would be allowable.

By the present amendment, each of the remaining independent claims has been amended to include this recitation. Therefore, the pending claims are in condition for allowance, and notification to that effect is earnestly solicited.

### **Rejection of Claims Under § 103**

The Examiner rejected claims 1-8, 11-14, 16-18, 21-23 and 25-27 under 35 U.S.C. § 103(a) as being obvious over Justus et al. (Mutation Research (1998) 398: 131-41) in view of Chalfie et al. (Science (1994) 263: 802-04). The Examiner rejected claims 1-8, 11-18, 21-27 and 56 as being obvious over Farr (U.S. Patent 5,589,337) in view of Chalfie et al. (Science (1994) 263: 802-04). The Examiner rejected claims 1-8, 11-27, 56, and 57 as being obvious over Farr (U.S. Patent 5,589,337) in view of Chalfie et al. (Science (1994) 263: 802-04) and further in

view of Mitchell et al. (Mutation Research (1986) 159: 139-46). Applicants respectfully traverse these rejections.

As stated in the Interview Summary, the Examiner indicated that claims including the recitation of the host cell being in stationary growth phase would overcome the present prior art rejections. By the present amendment, each of the remaining independent claims has been amended to include this recitation. Therefore, the pending claims are in condition for allowance, and notification to that effect is earnestly solicited.

Accordingly, based on the foregoing differences, it is submitted that the references cited in the prior art rejections neither teach nor suggest the presently claimed methods, and withdrawal of this rejection is respectfully requested.

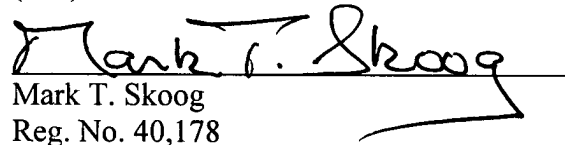
### Summary

In summary, each of claims 1-8, 11-16, 19-24, 56, and 58 are in condition for allowance. The Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this patent application.

Respectfully submitted,

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Date: Oct 18, 2002

  
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## MARKED UP VERSION TO SHOW CHANGES MADE

1. (Twice Amended) A method of determining a mutagen comprising:  
contacting a test compound with a host cell comprising a DNA sequence encoding a fluorescent protein operably linked to a mutagen sensitive gene, the host cell being in [logarithmic or] stationary growth phase;  
monitoring a host cell preparation for the fluorescent protein; and  
determining a mutagen when an amount of the fluorescent protein meets or exceeds a predetermined threshold value, wherein determining further comprises statistically analyzing a difference in the location of a data distribution, a difference in a shape of a data distribution, or a combination thereof.

19. (Amended) The method of claim 1[8], wherein statistically analyzing comprises conducting a Kolmogorov-Smirnov Z Test.

56. (Amended) A method of determining an antimutagen comprising:  
contacting a test compound and a mutagen with a host cell comprising a DNA sequence encoding a fluorescent protein operably linked to a mutagen sensitive gene, the host cell being in stationary growth phase;  
monitoring a host cell preparation for the fluorescent protein; and  
determining an antimutagen when an amount of the fluorescent protein falls below a predetermined threshold value, wherein determining further comprises statistically analyzing a difference in the location of a data distribution, a difference in a shape of a data distribution, or a combination thereof.